

## ACTION

## § 1224.1-4

§ 1222.4-2). For continuation project applications, a written statement shall be included which specifies how the advisory group complied with its responsibilities under § 1222.4 of these regulations. This statement shall be signed by an authorized representative of the advisory group (see § 1222.4-2 and 3).

(b) In each Sponsor's Quarterly Program Report (A-568), the sponsor shall include a brief statement describing the extent to which the advisory group was involved in the continuing development and implementation of the project.

### PART 1224—IMPLEMENTATION OF THE PRIVACY ACT OF 1974

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AUTHORITY: Pub. L. 93-579, 5 U.S.C. 552a.

SOURCE: 42 FR 54286, Oct. 5, 1977, unless otherwise noted.

#### § 1224.1-1 Purpose.

The purpose of this part is to set forth the basic policies of ACTION governing the maintenance of systems of records containing personal information as defined in the Privacy Act (5 U.S.C. 552a). Records included in this part are those described in aforesaid Act and maintained by ACTION and/or any component thereof.

#### § 1224.1-2 Policy.

It is the policy of ACTION to protect, preserve and defend the right of privacy of any individual as to whom the agency maintains personal information in any system records and to provide appropriate and complete access to such records including adequate opportunity to correct any errors in said records. It is further the policy of the agency to maintain its records in such a fashion that the information contained therein is and remains material and relevant to the purposes for which it is received in order to maintain its records with fairness to the individuals who are the subject of such records.

#### § 1224.1-3 Definitions.

(a) *Record* means any document or other information about an individual maintained by the agency whether collected or grouped and including but not limited to information regarding education, financial transactions, medical history, criminal or employment history, or any other personal information which contains the name or other personal identification number, symbol, etc. assigned to such individual.

(b) *System of Records* means a group of any records under the control of the agency from which information is retrieved by use of the name of an individual or by some identifying number, symbol, or other identifying particular of whatsoever kind or nature.

(c) *Routine Use* means, with respect to the disclosure of a record, the use of such record for a purpose which is compatible with the purpose for which it was collected.

(d) The term *agency* means ACTION and/or any component thereof.

(e) The term *individual* means any citizen of the United States or an alien lawfully admitted to permanent residence.

(f) The term *maintain* includes the maintenance, collection, use or dissemination of any record.

#### § 1224.1-4 Disclosure of records.

The agency will not disclose any personal information from systems of records it maintains to any individual other than the individual to whom the record pertains, or to another agency, without the express written consent of

the individual to whom the record pertains, or his agent or attorney, except in the following instances:

(a) To officers or employees of ACTION having a need for such record in the official performance of their duties.

(b) With respect to records which should follow an employee in transfer situations, to the personnel office of a different agency as a result of a transfer or a potential transfer of the individual to whom the record pertains.

(c) When required under the provisions of the Freedom of Information Act (5 U.S.C. 552).

(d) For routine uses as appropriately published in the annual notice of the FEDERAL REGISTER.

(e) To the Bureau of the Census for uses pursuant to Title 13.

(f) To an individual or agency having a proper need for such record for statistical research provided that such record is transmitted in a form which is not individually identifiable and that an appropriate written statement is obtained from the person to whom the record is transmitted stating the purpose for the request and a certification under oath that the records will be used only for statistical purposes.

(g) To the National Archives of the United States as a record of historical value under rules and regulations of the Archives as may be established by the Administrator of General Services or his designee.

(h) To an agency or instrumentality of any governmental jurisdiction within the control of the United States for civil or criminal law enforcement purposes provided however that the head of any such agency instrumentality has made a written request for such records specifying the particular portion desired and the law enforcement activity for which the record is sought. Such a record may also be disclosed by the agency to the law enforcement agency on its own initiative in situations in which criminal conduct is suspected provided that such disclosure has been established as a routine use or in situations in which the misconduct is directly related to the purpose for which the record is maintained.

(i) In emergency situations upon a showing of compelling circumstances affecting the health or safety of any in-

dividual provided that after such disclosure notification of such disclosure must be promptly sent to the last known address of the individual to whom the record pertains.

(j) To either House of Congress or to a subcommittee or committee (joint or of either house) to the extent the subject matter falls within their jurisdiction.

(k) To the comptroller general or any of his authorized representatives in the course of the performance of his duties of that of the General Accounting Office.

(l) Pursuant to an order of a court of competent jurisdiction provided that if any such record is disclosed under such compulsory legal process and subsequently made public by the court which issued it, the agency must make a reasonable effort to notify the individual to whom the record pertains of such disclosure.

**§ 1224.1-5 Annual notices.**

The agency shall publish annually a notice of all systems of records maintained by it as defined herein in the format prescribed by the General Services Administration in the FEDERAL REGISTER, *Provided, however*, That such publication shall not be made for those systems of records maintained by other agencies though in the temporary custody of this agency.

**§ 1224.1-5a New uses of information.**

At least 30 days prior to publication of information under the preceding section, the agency shall publish in the FEDERAL REGISTER a notice of its intention to establish any new routine use of any system of records maintained by it with an opportunity for public comments on such use. Such notice shall contain the following:

(a) The name of the system of records for which the routine use is to be established.

(b) The authority for the system.

(c) The purpose for which the record is to be maintained.

(d) The proposed routine use(s).

(e) The purpose of the routine use(s).

(f) The categories of recipients of such use. In the event of any request for an addition to the routine uses of

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the systems which the agency maintains, such request may be sent to the following officer: Director, A&F/AS, ACTION, 806 Connecticut Avenue NW., Washington, DC 20525.

### **§ 1224.1-6 Reports regarding changes in systems.**

The agency shall provide to Congress, the Office of Management and Budget, and the Privacy Protection Commission advance notice of any proposal to establish or alter any system of records as defined herein. This report will be submitted in accord with guidelines to be provided by the Office of Management and Budget.

### **§ 1224.1-7 Use of social security account number in records systems. [Reserved]**

### **§ 1224.1-8 Rules of conduct.**

(a) The Head of the agency shall assure that all persons involved in the design, development operation or maintenance of any systems of records as defined herein are informed of all requirements necessary to protect the privacy of individuals who are the subject of such records. All employees shall be informed of all implications of the Act in this area including the criminal penalties provided under 5 U.S.C. 552a and the fact that agency may be subject to civil suit for failure to comply with the provisions of the Privacy Act and these regulations.

(b) The Head of the agency shall also ensure that all personnel having access to records receive adequate training in the protection of the security of personal records and that adequate and proper storage is provided for all such records with sufficient security to assure the privacy of such records.

### **§ 1224.1-9 Records systems—Management and control.**

(a) The Director of Administrative Services (A&F) shall have overall control and supervision of the security of all records keeping systems and shall be responsible for monitoring the security standards set forth in these regulations.

(b) A designated official (System Manager) shall be named who shall have management responsibility for each record system maintained by the

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agency and who shall be responsible for providing protection and accountability for such records at all times and for insuring that such records are secured in appropriate containers whenever not in use or in the direct control of authorized personnel.

### **§ 1224.1-10 Security of records systems—Manual and automated systems.**

The Head of the agency has the responsibility of maintaining adequate technical, physical, and security safeguards to prevent unauthorized disclosure or destruction of manual and automatic record systems. These security safeguards shall apply to all systems in which identifiable personal data are processed or maintained including all reports and outputs from such systems which contain identifiable personal information. Such safeguards must be sufficient to prevent negligent, accidental, or unintentional disclosure, modification or destruction of any personal records or data and must furthermore minimize to the extent practicable the risk that skilled technicians or knowledgeable persons could improperly obtain access to modify or destroy such records or data and shall further insure against such casual entry by unskilled persons without official reasons for access to such records or data.

(a) *Manual systems.* (1) Records contained in records systems as defined herein may be used, held or stored only where facilities are adequate to prevent unauthorized access by persons within or without the agency.

(2) All records systems when not under the personal control of the employees authorized to use same must be stored in an appropriate metal filing cabinet. Where appropriate, such cabinet shall have three position dial-type combination lock, and/or be equipped with a steel lock bar secured by a GSA approved changeable combination padlock or in some such other securely locked cabinet as may be approved by GSA for the storage of such records. Certain systems are not of such confidential nature that their disclosure would harm an individual who is the subject of such record. Records in this category shall be maintained in steel

cabinets without the necessity of combination locks.

(3) Access to and use of systems of records shall be permitted only to persons whose official duties require such access within the agency, for routine uses as defined in subpart B herein as to any given system, or for such other uses as may be provided herein.

(4) Other than for access within the agency to persons needing such records in the performance of their official duties or routine users as defined in subpart B herein or such other uses as provided herein, access to records within systems of records shall be permitted only to the individual to whom the record pertains or upon his or her written request to a designated personal representative.

(5) Access to areas where records systems are stored will be limited to those persons whose official duties require work in such areas and proper accountings of removal of any records in storage areas in the form directed by the Director, A&F/AS, shall be maintained at all times.

(6) The agency shall assure that all persons whose official duties who require access to and use of records contained in records systems are adequately trained to protect the security and privacy of such records.

(7) The disposal and destruction of records within records systems shall be in accord with rules promulgated by the General Services Administration.

(b) *Automated systems.* (1) Identifiable personal information may be processed, stored or maintained by automatic data systems only where facilities or conditions are adequate to prevent unauthorized access to such system in any form. Whenever such data whether contained in punch cards, magnetic tapes or discs are not under the personal control of an authorized person such information must be stored in a metal filing cabinet having a built-in three position combination lock, a metal filing cabinet equipped with a steel lock bar secured with a GSA approved combination padlock, or in adequate containers or in a secured room or in such other facility having greater safeguards than those provided for herein.

(2) Access to and use of identifiable personal data associated with automated data systems shall be limited to those persons whose official duties require such access. Proper control of personal data in any form associated with automated data systems shall be maintained at all times including maintenance of accountability records showing disposition of input and output documents.

(3) All persons whose official duties require access to processing and maintenance of identifiable personal data and automated systems shall be adequately trained in the security and privacy of personal data.

(4) The disposal and disposition of identifiable personal data and automated systems shall be carried on by shredding, burning or in the case of tapes or discs, degaussing, in accord with any regulations now or hereafter proposed by the GSA or other appropriate authority.

**§ 1224.1-11 Accounting for disclosure of records.**

Each office maintaining a system of records shall account for all records within such system by keeping a written log in the form prescribed by the Director, A&F/AS, containing the following information:

(a) The date, nature, and purpose of each disclosure of a record to any person or to another agency. Disclosures made to employees of the agency in the normal course of their official duties, or pursuant to the provisions of the Freedom of Information Act need not be accounted for.

(b) Such accounting shall contain the name and address of the person or agency to whom the disclosure was made.

(c) The accounting shall be maintained in accord with a system approved by the Director, A&F/AS, as sufficient for the purpose but in any event sufficient to permit the construction of a listing for all disclosures at appropriate periodic intervals.

(d) The accounting shall reference any justification or basis upon which any release was made including any written documentation required when records are released for statistical or law enforcement purposes under the

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provisions of subsection (b) of the Privacy Act of 1974 (5 U.S.C. 552a).

(e) For the purpose of this part, the system of accounting for disclosures is not a system of records under the definitions hereof and no accounting need be maintained for the disclosure of accounting of disclosures.

### **§ 1224.1-12 Contents of records systems.**

The agency shall maintain in any records contained in any records system hereunder only such information about an individual as is accurate, relevant, and necessary to accomplish the purpose for which the agency acquired the information as authorized by statute or Executive Order.

(a) In situations in which the information may result in adverse determinations about such individuals' rights, benefits and privileges under any Federal program, all information placed in records systems shall, to the greatest extent practicable, be collected from the individual to whom the record pertains.

(b) Each form or other document which an individual is expected to complete in order to provide information for any records system shall have appended thereto, or in the body of the document:

(1) An indication of the authority authorizing the solicitation of the information and whether the provision of the information is mandatory or voluntary.

(2) The purpose or purposes for which the information is intended to be used.

(3) Routine uses which may be made of the information and published pursuant to § 1224.1-6 of this regulation.

(4) The effect on the individual if any of not providing all or part of the required or requested information.

(c) Records maintained in any system of record used by the agency to make any determination about any individual shall be maintained with such accuracy, relevancy, timeliness, and completeness as is reasonably necessary to assure fairness to the individual in the making of any determination about such individual, provided however, that the agency shall not be required to update or keep current retired records.

(d) Before disseminating any record about any individual to any person other than an agency, unless the dissemination is made pursuant to the provisions of the Freedom of Information Act (5 U.S.C. 552) the agency shall make reasonable efforts to assure that such records are, or were at the time they were collected, accurate, complete, timely and relevant for agency purposes.

(e) Under no circumstances shall the agency maintain any record about any individual with respect to or describing how such individual exercises rights guaranteed by the first amendment of the Constitution of the United States unless expressly authorized by statute or by the individual about whom the record is maintained, or unless pertinent to and within the scope of an authorized law enforcement activity.

(f) In the event any record is disclosed as a result of the order of a court of appropriate jurisdiction, the agency shall make reasonable efforts to notify the individual whose record was so disclosed after the process becomes a matter of public record.

### **§ 1224.1-13 Access to records.**

(a) Upon request of any individual about whom a record is maintained addressed to the Director of Administrative Services, 806 Connecticut Avenue NW., Washington, DC 20525, in person during regular business hours, or by mail, access to his record or to any information contained therein shall be provided.

(b) If the request is made in person, such individual may, upon his request, be accompanied by a person of his choosing to review the record and shall be provided an opportunity to have a copy made of all or any record about such individual.

(c) A record may be disclosed to a representative chosen by the individual as to whom a record is maintained upon proper written consent of such individual.

(d) Request made in person will be promptly complied with if the records sought are in the immediate custody of ACTION. Mailed requests or personal requests for documents in storage or otherwise not immediately available,

will be acknowledged within ten working days, and the information requested will be promptly provided thereafter.

(e) With regard to any request for disclosure of record the following procedure shall apply:

(1) Medical or psychological records shall be disclosed to an individual unless in the judgment of the agency, access to such records might have an adverse effect upon such individual. When such determination has been made, the agency may require that the information be disclosed only to a physician chosen by the requesting individual. Such physician shall have full authority to disclose all or any portion of such record to the requesting individual in the exercise of his professional judgment.

(2) Test material and copies of certificates or other lists of eligibles or any other listing, the disclosure of which would violate the privacy of any other individual, or be otherwise proscribed by the provision of the Privacy Act of 1974, shall be removed from the record before disclosure to any individual to whom the record pertains.

**§ 1224.1-14 Specific exemptions.**

Records or portions of records specified below shall be exempt from disclosure provided however that no such exemption shall apply to the provisions of § 1224.1-16(d)(3) hereof (informing prior recipient of corrected or disputed records), § 1224.1-12(a) (collecting information directly from the individual to whom it pertains); § 1224.1-12(b) (informing individuals asked to supply information of the purposes for which it is collected and whether it is mandatory); § 1224.1-12(c) (maintaining records with accuracy, completeness, etc. as reasonably necessary for agency purposes); § 1224.1-12(f) (notifying the subjects of records disclosed under compulsory court process); § 1224.1-16(g) (civil remedies). With the above exceptions the following material shall be exempt from disclosure to the extent indicated:

(a) Material considered classified and exempt from disclosure under the provisions of section 552(b)(1) of the Freedom of Information Act (5 U.S.C. 552).

(b) Investigatory material compiled for the purposes of law enforcement provided, however, that if such information is to be used for the basis for denial of any right, privilege or benefit to which such individual would be entitled by Federal law or otherwise, such material shall be provided to the such individual except to the extent necessary to protect the identity of a source who furnished information to the government under an express promise that his or her identity would be held in confidence, or prior to the effective date of the Privacy Act of 1974, under an implied promise of such source.

(c) Required by statute to be maintained and used solely as statistical records.

(d) Investigatory material compiled solely for the purpose of determining suitability, eligibility or qualification for service as an employee or volunteer or for the obtaining of a Federal contract or for access to classified information; *Provided, however*, that such material shall be disclosed to the extent possible without revealing the identity of a source who furnished information to the government under an express promise of the confidentiality of his identity or, prior to the effective date of the Privacy Act of 1974, under an implied promise of such confidentiality of identity.

(e) Testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal service, disclosure of which would compromise the objectivity or fairness of the testing or examination process.

(f) An individual shall not have a right of access to any information compiled by the agency in reasonable anticipation of a civil action or proceeding.

The above specific exemptions from disclosure are made for the purpose of protecting the confidentiality of classified information, sources who furnish information for law enforcement purposes or selection purposes for volunteer service or employment, and to protect the integrity of any system of tests or examinations for Federal service or advancement therein.

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### **§ 1224.1-15 Identification of requestors.**

The agency shall require reasonable identification of all individuals who request access to records to assure that records are disclosed to the proper person.

(a) In the event an individual requests disclosure in person, such individual shall be required to show an identification card such as a drivers license etc., containing a photo and a sample signature of such individual. Such individual may also be required to sign a statement under oath as to his or her identity acknowledging that he or she is aware of the penalties for improper disclosure under the provisions of the Privacy Act of 1974.

(b) In the event that disclosure is requested by mail, the agency may request such information as may be necessary to reasonably assure that the individual making such request is properly identified. In certain cases, the agency may require that a mail request be notarized with an indication that the notary received an acknowledgment of identity from the individual making such request.

(c) In the event an individual is unable to provide suitable documentation or identification, the agency may require a signed notarized statement asserting the identity of the individual and stipulating that the individual understands that knowingly or willfully seeking or obtaining access to records about another person under false pretenses is punishable by a fine of up to \$5,000.

(d) In the event a requestor wishes to be accompanied by another person while reviewing his or her records, the agency may require a written statement authorizing discussion of his or her records in the presence of the accompanying representative or other persons.

### **§ 1224.1-16 Amendment of records and appeals with respect thereto.**

A request for inspection of any record shall be made to the Director, A&F/Administrative Services, 806 Connecticut Avenue NW., Washington, DC 20525. Such request may be made by mail or in person provided however that requests made in person may be

required to be made upon a form to be provided by the Director of Administrative Services. The Director of Administrative Services shall keep a current list of systems of records maintained by the agency and published in accordance with the provisions of these regulations. Requests as to record systems maintained in Regional Offices may be addressed to the appropriate Regional Office, Attention the Regional Records Officer, in person or by mail. A requesting individual may request that the agency compile all records pertaining to such individual at any named Regional Office or at the Central Office in Washington, DC, for such individual's inspection and/or copying. In the event an individual makes such request for a compilation of all records pertaining to him in various locations, appropriate time for such compilation shall be provided as may be necessary to promptly comply with such requests.

Any such requests should contain, at a minimum, identifying information needed to locate any given record and a brief description of the item or items of information required in the event the individual wishes to see less than all records maintained about him.

(a) In the event an individual after examination of his record desires to request an amendment of such records, he may do so by addressing such request to the Director of Administrative Services. The Director of Administrative Services shall provide assistance in preparing any such amendment upon request and a written acknowledgment of receipt of such request within 10 working days from the receipt thereof from the individual who requested the amendment. Such acknowledgment may, if necessary, request any additional information needed to make a determination with respect to such request. If the agency makes a determination to comply with such request within such 10-day period, no written acknowledgement is necessary, provided however that a certification of such change shall be provided to such individual within such period.

(b) Promptly after acknowledgment of the receipt of a request for an amendment the agency shall take one of the following actions:

(1) Make any corrections of any portion of the record which the individual believes is not accurate, relevant, timely or complete.

(2) Inform the individual of its refusal to amend the record in accord with the request together with the reason for such refusal and the procedures established for requesting review of such refusal by the head of the agency or his designee. Such notice shall include the name and business address of such official.

(3) Refer the request to the agency that has control of and maintains the record in those instances where the record requested remains the property of the controlling agency and not of ACTION.

(c) In reviewing a request to amend the record the agency shall assess the accuracy, relevance, timeliness and completeness of the record with due and appropriate regard for fairness to the individual about whom the record is maintained. In making such determination, the agency shall consult criteria for determining record quality published in pertinent chapters of the Federal Personnel Manual and to the extent possible shall accord therewith.

(d) In the event the agency agrees with the individual's request to amend such record, it shall:

(1) Advise the individual in writing;  
(2) Correct the record accordingly; and

(3) Advise all previous recipients of a record which was corrected of the correction and its substance.

(e) In the event the agency, after an initial review of the request to amend a record, disagrees with all or a portion of it, the agency shall:

(1) Advise the individual of its refusal and the reasons therefore;

(2) Inform the individual that he or she may request further review in accord with the provisions of these regulations; and

(3) The name and address to whom the request should be directed.

(f) In the event an individual requester disagrees with the initial agency determination, he or she may appeal such determination to the Deputy Director of the Agency or his designee. Such request for review must be made

within 30 days after receipt by the requestor of the initial refusal to amend.

(g) If after review the Deputy Director or his designee refuses to amend the record as requested he shall advise the individual requester of such refusal and the reasons for same; of his or her right to file a concise statement of the reasons for disagreeing with the decision of the agency in the record; of the procedures for filing a statement of disagreement and of the fact that such statement so filed will be made available to anyone to whom the record is subsequently disclosed together with a brief statement of the agency summarizing its reasons for refusal, if the agency decides to place such brief statement in the record. The agency shall have the authority to limit the length of any statement to be filed, such limit to depend upon the record involved. The agency shall also inform such individual that prior recipients of the disputed record will be provided a copy of both statements of dispute to the extent that the accounting of disclosures has been maintained and of the individual's right to seek judicial review of the agency's refusal to amend the record.

(h) If after review the official determines that the record should be amended in accordance with the individual's request the agency shall proceed as provided above in the event a request is granted upon initial demand.

(i) Final agency determination of an individual's request for a review shall be concluded within 30 working days from the initial request excluding the period of time between receipt by such individual of the initial denial and his or her filing of a request for review provided however that the Deputy Director or his designee may determine that fair and equitable review cannot be made within that time. If such circumstances occurs, the individual shall be notified of the additional time required in writing and of the approximate date on which determination of the review is expected to be completed.

**§1224.1-17 Denial of access and appeals with respect thereto.**

In the event that the agency finds it necessary to deny any individual access to a record about such individual



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pursuant to provisions of the Privacy Act or of these regulations, a response to the original request shall be made in writing within ten working days from the date of such initial request. The denial shall specify the reasons for such refusal or denial and advise the individual of the reasons therefore, and of his or her right to an appeal within the agency and/or judicial review under the provisions of the Privacy Act.

(a) In the event an individual desires to appeal any denial of access, he may do so in writing by addressing such appeal to the attention of the Deputy Director, ACTION, c/o the Director, AF/ Administrative Services, 806 Connecticut Avenue NW., Washington, DC 20525. Although there is no time limit for such appeals, ACTION shall be under no obligation to maintain copies of original requests or responses thereto beyond 180 days from the date of the original request.

(b) The Deputy Director, or his designee, shall review a request from a denial of access and shall make a determination with respect to such appeal within 20 days after receipt thereof. Notice of such determination shall be provided to the individual making the request in writing. If such appeal is denied in whole or in part, such notice shall include notification of the right of the person making such requests to have judicial review of the denial as provided in the Privacy Act (5 U.S.C. 552a).

### § 1224.1-18 Fees.

No fees shall be charged for search time or for any other time expended by the agency to produce a record. Copies of records may be charged for at the rate of 10 cents per page provided that one copy of any record shall be provided free of charge.

### § 1224.1-19 Inspector General exemptions.

Pursuant to sections (j) and (k) of the Privacy Act of 1974, ACTION has promulgated the following exemptions to specified provisions of the Privacy Act:

(a) Pursuant to, and limited by, 5 U.S.C. 552a(j)(2), the system of records maintained by the Office of the Inspector General of ACTION that contains the Investigative Files shall be ex-

empted from the provisions of 5 U.S.C. 552a, except subsections (b), (c) (1) and (2), (e)(4) (A) through (F), (e) (6), (7), (9), (10), and (11), and (i), and 45 CFR 1224.1-12, 1224.1-13, 1224.1-15, 1224.1-16, 1224.1-17, and 1224.1-18, insofar as the system contains information pertaining to criminal law enforcement investigations.

(b) Pursuant to, and limited by, 5 U.S.C. 552a(k)(2), the system of records maintained by the Office of the Inspector General of ACTION that contains the Investigative Files shall be exempted from 5 U.S.C. 552a (c)(3), (d), (e)(1), (e)(4) (G), (H), and (I), and (f), and 45 CFR 1224.1-12, 1224.1-13, 1224.1-15, 1224.1-16, 1224.1-17, and 1224.1-18, insofar as it contains investigatory materials compiled for law enforcement purposes.

[57 FR 45326, Oct. 1, 1992]

## PART 1225—VOLUNTEER DISCRIMINATION COMPLAINT PROCEDURE

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